

FRUITS AND VEGETABLES

CANNED FRUIT

28357. Maraschino cherries. (F.D.C. No. 47616. S. Nos. 61-002/3 T.)

QUANTITY: 24 cases, each containing 24 jars, and 34 cases, each containing 24 jars, at Holland, Mich.

SHIPPED: 12-26-61 and 1-16-62, from Chicago, Ill., by M. Wolff & Sons.

LABEL IN PART: (Jar) "Food Club Maraschino Cherries Distributed By Topco Associates, Inc., Chicago, Ill. * * * Contents 4 Fl. Oz. [or "8 Fl. Oz."]."

RESULTS OF INVESTIGATION: Examination showed that the article (both lots) was short in volume.

LIBELED: 5-25-62, W. Dist. Mich.

CHARGE: 403(e)(2)—when shipped, the article failed to bear a label containing an accurate statement of the quantity of contents.

DISPOSITION: 7-9-62. Default—destruction.

28358. Glaced fruit. (F.D.C. No. 46518. S. No. 9-577 T.)

QUANTITY: 24 ctns., each containing 1 35-lb. tin, at Perry, N.Y.

SHIPPED: 9-18-61, from North East, Pa., by Ohio Fruit Co., Inc.

LABEL IN PART: (Cans and ctns.) "Garden of Eden Glaced Diced Fruit Red Citron Net weight 35 pounds * * * Packed by Ohio Fruit Products Co., Inc., North East, Pa."

LIBELED: 11-1-61, W. Dist., N.Y.

CHARGE: 402(a)(3)—contained *Drosophila* flies; and 402(a)(4)—prepared and packed under insanitary conditions.

DISPOSITION: 2-7-62. Consent—claimed by shipper and destroyed.

28359. Glaced cherries. (F.D.C. No. 47620. S. Nos. 44-059 T, 44-301 T.)

QUANTITY: 10 30-lb. ctns. at Trenton, N.J.

SHIPPED: 4-3-62, from New London, Conn., by deRedon Food Products Corp.

LABEL IN PART: (Ctn.) "Normandy Cherries Whole and Broken * * * Contains Artificial Flavor & Color $\frac{1}{10}$ of 1% Benzoate of Soda Sulphur Dioxide Present Net Weight 30 Lbs. Packed By The deRedon Food Products Corp. New London, Conn."

LIBELED: 6-5-62, Dist. N.J.

CHARGE: 402(a)(3)—contained insects, insect parts, *Drosophila* fly eggs and maggots when shipped; and 402(a)(4)—prepared and packed under insanitary conditions; and 403(k)—the label failed to state that benzoate of soda and sulphur dioxide, declared to be present in the article, were chemical preservatives.

DISPOSITION: 7-3-62. Default—destruction.

28360. Cherries in cherry liqueur. (F.D.C. No. 47562. S. No. 41-752 T.)

QUANTITY: 173 cases, 12 1-lb. 7-oz. btl. each, at New York, N.Y.

SHIPPED: Imported 12-15-61, from Italy, by Liberty Import Corp.

LABEL IN PART: (Btl.) "Fabbri Italian Cherries in Cherry Liqueur light sugar syrup and brandy Product of Italy G. Fabbri S.p.A. Bologna (Italy) Net Weight: 1 Lb. 7 Oz."

LIBELED: 4-30-62, S. Dist. N.Y.

CHARGE: 402(c)—when shipped, the article contained a color additive, "New Coccin," C.I. No. 16255, an isomer of FD&C Red No. 2, Amaranth, which color additive was unsafe within the meaning of 706(a) since it and its use in food were not in conformity with a regulation or exemption in effect pursuant to 706.

DISPOSITION: 7-27-62. Consent—claimed by Liberty Import Corp., and released under bond for return to the original supplier.

VEGETABLES AND VEGETABLE PRODUCTS

28361. Lettuce. (F.D.C. No. 45679. S. No. 26-502 R.)

INFORMATION FILED: 8-17-61, Dist. Ariz., against Bodine Produce Co., Inc. Phoenix, Ariz. Amended information filed 1-24-62.

SHIPPED: 12-6-60, from Glendale, Ariz., to Milwaukee, Wis.

LABEL IN PART: "Produce of U.S.A. Mr. Big Head Lettuce Shipping in Season from Arizona and California Growers. Bodine Produce Company. Shippers Main Office: Phoenix, Arizona."

CHARGE: 402(a)(2)(B)—when shipped, the lettuce was a raw agricultural commodity and it contained a pesticide chemical, namely, DDT, which was unsafe within the meaning of 408(a) since the quantity of such pesticide chemical on the article was not within the limits of the tolerance prescribed by regulations.

PLEA: Not guilty.

DISPOSITION: On 3-6-62, the case came on for trial before judge and jury; and on 3-7-62, the jury returned a verdict of guilty. On 3-9-62, the defendant was fined \$500, plus costs. On 3-12-62, defendant filed a motion for a new trial, objections to the memorandum of costs and disbursements, motion to review the order taxing costs, and a motion for judgment of acquittal notwithstanding the verdict. Subsequently, the court rendered the following memorandum decision:

BOLDT, District Judge: "At various stages in this proceeding—during the trial, after the jury's verdict of guilty, at the time of sentencing, and in considering defendant's motions subsequent to sentencing—the Court has carefully evaluated the issues raised by the defendant. These issues merit a more extended presentation of the views of the Court than as previously stated extempore.

"The case arose as a misdemeanor criminal action under the Federal Food, Drug, and Cosmetic Act. In the Amended Information filed by the United States Attorney, the defendant was charged with having violated that Act by causing adulterated lettuce to be introduced and delivered for introduction into interstate commerce at Glendale, Arizona, consigned to Milwaukee, Wisconsin [21 U.S.C. 331(a)].

"The lettuce was alleged to be adulterated within the meaning of 21 U.S.C. 342(a)(2)(B) in that it was a raw agricultural commodity and it contained a pesticide chemical, namely DDT, which was unsafe within the meaning of 21 U.S.C. 346a(a) since the quantity of such pesticide chemical on the lettuce was not within the limits of the tolerance for DDT prescribed by regulations of the Secretary of Health, Education, and Welfare.

"Pertinent regulations of the Secretary, issued by statutory authority, established a tolerance or permissible limit of 7 parts per million for DDT on lettuce [21 CFR 120.101(e)(49); 21 U.S.C. 346a(a) and (k); 21 U.S.C. 346; 21 U.S.C. 371(a) and (e)].

"Upon the evidence adduced at the trial, the jury obviously concluded that the lettuce shipped by the defendant in this instance contained DDT in excess of 7 parts per million. In fact there was no substantial evidence to the contrary.